

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 852 – SB 910

April 24, 2017

SUMMARY OF ORIGINAL BILL: Requires an agency which oversees occupational licenses or permits to prove by clear and convincing evidence, that any denial or revocation of an occupational permit or license was done properly; provides that in cases where an occupational license or permit was not revoked or denied the burden of proof shall be by a preponderance of the evidence.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (007184): Deletes and rewrites the original bill such that the only substantive change requires an agency, which oversees permits, certificates, registrations, or licenses to prove by a preponderance of the evidence that any denial, suspension, or revocation of such permit, certificate, registration, or license was done properly.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue – Exceeds \$404,000/Secretary of State

Increase State Expenditures – \$6,500/One-Time/Division of Regulatory Boards
Exceeds \$584,500/Recurring/Division of Regulatory Boards
Exceeds \$4,000/Recurring/Health Related Boards
Exceeds \$404,000/Recurring/Secretary of State

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 4-5-102(3), a contested case is a proceeding in which legal rights, duties, or privileges of a party are determined by an agency after an opportunity for a hearing. Contested cases are currently conducted for suspensions, revocations, and refusals to renew licenses; however contested cases are not typically held for denial of initial licensing.

HB 852 – SB 910

- The proposed language would require the denial of licenses be conducted through a contested case procedure upon the denied party providing evidence to establish a prima facie case.
- Pursuant to Tenn. Code Ann. § 4-5-301, in the hearing of any contested case, the proceedings shall be conducted in the presence of an administrative judge or hearing officer.
- According to the Secretary of State (SOS), for contested cases there is a one-time docketing fee of \$200 per case and a fee of \$100 per hour for an administrative judge with such fees being retained within the SOS for administration of the judicial program.
- Based on information provided by the C&I, who issues the majority of licenses under title 62, the various regulatory boards deny approximately 4,000 license applications per year and under current procedure, if an applicant is denied a license, after an informal hearing before the board governing the occupation, the applicant can appeal any decision before chancery court, not through a contested case process.
- Assuming ten percent, or 400 (4,000 denied applications x 10.0%), of the applicants who were denied a license establish a prima facie case and opt to continue through to a contested case process, it will result in an increase in state expenditures for payment of an administrative judge or for hearing officer time as well as additional staffing needs within the Division of Regulatory Boards.
- Increased expenditures associated with additional contested cases and staffing needs will be paid to the SOS by the individual regulatory boards which are parties to contested cases; however, a precise impact to each regulatory board will be dependent upon the number of contested cases which occur as a direct result of this legislation.
- There will be a recurring increase in state expenditures to various regulatory boards within the C&I estimated to exceed \$400,000 [(\$200 docketing fee per case x 400 cases) + (\$100 per hour x 8 hours per case x 400 cases)].
- According to the Department of Health, there are only 7 boards which do not currently offer a contested case hearing for the denial of a license. Of those boards, only four licenses have been denied.
- Four additional contested case hearings will result in a recurring increase in state expenditures estimated to exceed \$4,000 [(\$200 docketing fee per case x 4 cases) + (\$100 per hour x 8 hours per case x 4 cases)] to various regulatory boards within the Department of Health.
- The recurring increase in state expenditures for fees paid by various regulatory boards will result in an equal and corresponding recurring increase in state revenue to the SOS estimated to exceed \$404,000 (\$400,000 from the Division of Regulatory Boards + \$4,000 from Health Related Boards). Given that the fee revenue received by the SOS is to be expended as funding for conducting contested case hearings, the recurring increase in state expenditures to the SOS is estimated to exceed \$404,000.
- The Division of Regulatory Boards will require two new attorney level two positions to accommodate the additional 400 cases.
- The recurring increase in state expenditures to various regulatory boards within the C&I for salary, benefits, and office space rental is estimated to be \$184,492 {[(\$71,292 salary + \$18,754 benefits) x 2 positions] + \$4,400 office rental}.
- The one-time increase in state expenditures to various regulatory boards within the C&I for supplies is estimated to be \$6,500.

- Pursuant to Tenn. Code Ann. 4-29-121, all regulatory boards are required to be self-supporting over any two-year period; therefore, each board must collect fees in an amount sufficient to pay the cost of operating the board.
- Each regulatory board receives its operating revenue from licensure or permitting fees and the collection of civil penalties.
- In order to accommodate the increase in expenditures associated with additional contested cases and staffing, the various regulatory boards may be required to increase fees associated with licensing and permitting; however, the precise impact to each regulatory board will be dependent upon the extent of increased expenditures incurred by each board.
- The total recurring increase in state expenditures to various regulatory boards is estimated to exceed \$584,492 (\$400,000 contested case costs in the C&I + \$184,492 new positions within the C&I).
- The total one-time increase in state expenditures to various regulatory boards within the C&I for supplies is estimated to be \$6,500.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jrh